

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff

CRIMINAL 07-0042 (GAG)

V.

GUILLERMO PERALTA-TAVARES,

Defendant

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
RE: RULE 11(c)(1)(A) & (B) PROCEEDINGS (PLEA OF GUILTY)

I. Personal Background

On March 20, 2007, Guillermo Peralta-Tavares, the defendant herein, was charged in a two-count indictment. He agrees to plead guilty to count one of the indictment.

Count one charges that the defendant from in or about April, the exact date unknown, until in or about June, the exact date unknown, in the District of Puerto Rico, the Dominican Republic, and elsewhere and within the jurisdiction of this court, the defendant and co-defendants did knowingly and intentionally conspire, combine, confederate, and agree together and with each other and with other persons known and unknown to the Grand Jury, to commit an offense against the United States, that is, to possess with intent to distribute and distribute narcotic controlled substances, to wit: five kilograms or more of cocaine, a Schedule II, Narcotic Drug Controlled Substance, in violation of 21 U.S.C. § 841(a)(1), and § 841(b)(1)(A). All in violation of 21 U.S.C. § 846.

The United States and the defendant agree that for the purposes of this plea agreement, the defendant is to be held responsible for no less than 5 grams nor more than 15 grams of cocaine.

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3 Defendant filed a motion for change of plea on June 22, 2007.

4 II. Consent to Proceed Before a Magistrate Judge

5 Today, while assisted by Luis Rafael Rivera-Rodríguez, Esq., the defendant, by
6 consent, appeared before me in order to change his previous not guilty plea to a plea
7 of guilty as to count one of the indictment.8 In open court the defendant was questioned as to the purpose of the hearing
9 being held. The defendant responded that the purpose of the hearing was to plead
10 guilty. The defendant was advised of his right to have all proceedings, including the
11 change of plea hearing, before a United States district judge. Defendant was given
12 notice of: (a) the nature and purpose of the hearing; (b) the fact that all inquiries
13 were to be conducted under oath and that it was expected that his answers would
14 be truthful (he was also explained that the consequences of lying under oath could
15 lead to a perjury charge); and (c) his right to have the change of plea proceedings
16 presided over by a district judge instead of a magistrate judge. The defendant was
17 also explained the differences between the appointment and functions of the two.
18 The defendant consent to proceed before this magistrate judge.

19 III. Proceedings Under Rule 11, Federal Rules of Criminal Procedure

20 A. Compliance With Requirements Rule 11(c)(1)

21 Rule 11 of the Federal Rules of Criminal Procedure governs the
22 acceptance of guilty pleas to federal criminal violations. Pursuant to
23 Rule 11, in order for a plea of guilty to constitute a valid waiver of the
24 defendant's right to trial, guilty pleas must be knowing and voluntary:
25 "Rule 11 was intended to ensure that a defendant who pleads guilty
26 does so with an 'understanding of the nature of the charge and
27 consequences of his plea.'" United States v. Cotal-Crespo, 47 F.3d 1, 4
(1st Cir. 1995) (quoting McCarthy v. United States, 394 U.S. 459, 467
(1969)). [There are three core concerns in these proceedings]: 1)
absence of coercion; 2) understanding of the charges; and 3) knowledge
of the consequences of the guilty plea. United States v. Cotal-Crespo, 47
F.3d at 4 (citing United States v. Standard, 926 F.2d 1237, 1244-45 (1st Cir. 1991)).28 United States v. Hernández-Wilson, 186 F.3d 1, 5 (1st Cir. 1999).

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In response to further questioning, defendant was explained and he understood that if convicted on count one he may be sentenced to a term of imprisonment which shall not exceed life imprisonment, (statutory mandatory minimum of 10 years), a fine not to exceed \$4,000,000, and a term of supervised release of not more than five years.

Prior to defendant's change of plea hearing, the defendant shall pay a special monetary assessment of \$100, per offense of conviction, pursuant to 18 U.S.C. § 3013(a).

The defendant agrees that any fine or restitution imposed by the court will be due and payable immediately. The defendant cannot be placed on probation nor have the imposition of the sentence suspended.

Defendant was advised that the ultimate sentence was a matter solely for the court to decide in its discretion and that, even if the maximum imprisonment term and fine were to be imposed upon him, he later could not withdraw his guilty plea if he was unhappy with the sentence of the court. The defendant understood this.

Defendant was explained what the supervised release term means. It was emphasized that cooperation with the United States Probation officer would assist the court in reaching a fair sentence.

Emphasis was made on the fact that at this stage, no prediction or promises as to the sentence to be imposed could be made by anyone. Defendant responded to questions in that no promises, threats, inducements or predictions as to what sentence will be imposed have been made to him.

B. Admonishment of Constitutional Rights

To assure defendant's understanding and awareness of his rights, defendant was advised of his right:

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3 1. To remain silent at trial and be presumed innocent, since it is the
4 government who has the burden of proving his guilt beyond a reasonable doubt.

5 2. To testify or not to testify at trial, and that no comment could be made by
6 the prosecution in relation to his decision not to testify.

7 3. To a speedy trial before a district judge and a jury, at which he would be
8 entitled to see and cross examine the government witnesses, present evidence on his
9 behalf, and challenge the government's evidence.

10 4. To have a unanimous verdict rendered by a jury of twelve persons which
11 would have to be convinced of defendant's guilt beyond a reasonable doubt by means
12 of competent evidence.

13 5. To use the subpoena power of the court to compel the attendance of
14 witnesses.

15 Upon listening to the defendant's responses, observing his demeanor and his
16 speaking with his attorney, that to the best of counsel's belief defendant had fully
17 understood his rights, it is determined that defendant is aware of his constitutional
18 rights.

19 C. Consequences of Pleading Guilty

20 Upon advising defendant of his constitutional rights, he was further advised
21 of the consequences of pleading guilty. Specifically, defendant was advised that by
22 pleading guilty and upon having his guilty plea accepted by the court, he will be
23 giving up the above rights and would be convicted solely on his statement that he is
24 guilty.

25 Furthermore, the defendant was admonished of the fact that by pleading guilty
26 he would not be allowed later on to withdraw his plea because he eventually might
27 disagree with the sentence imposed, and that when he were under supervised
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release, and upon violating the conditions of such release, that privilege could be revoked and he could be required to serve an additional term of imprisonment. He was also explained that parole has been abolished and that there are immigration consequences to his conviction, that he would be deported to his native land upon completion of his imprisonment.

D. Plea Agreement

The parties have entered into a written plea agreement that, upon being signed by the government, defense attorney and defendant, was filed and made part of the record. Defendant was clearly warned and recognized having understood that:

1. The plea agreement is not binding upon the sentencing court.

2. The plea agreement is an "agreement" between the defendant, defense attorney and the attorney for the government which is presented as a recommendation to the court in regards to the applicable sentencing adjustments and guidelines, which are advisory.

3. The agreement provides a sentencing recommendation and/or anticipated sentencing guideline computation, that can be either accepted or rejected by the sentencing court.

4. In spite of the plea agreement and any sentencing recommendation contained therein, the sentencing court retains full discretion to reject such plea agreement and impose any sentence up to the possible maximum penalty prescribed by statute.

5. The defendant understands that if the court accepts this agreement and sentences defendant according to its terms and conditions, defendant waives and surrenders his right to appeal the conviction and sentence in this case.

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3 Defendant acknowledged having understood this explanation. Should
4 defendant meet all the requirements of the "safety valve" provisions of U.S.S.G. §
5 5C1.2, then the defendant would be entitled to a further two level reduction in the
6 base offense level.

7 E. Government's Evidence (Basis in Fact)

8 The government presented a proffer of its evidence with which the defendant
9 basically concurred.

10 Accordingly, it is determined that there is a basis in fact and evidence to
11 establish all elements of the offense charged.

12 F. Voluntariness

13 The defendant accepted that no leniency had been promised, no threats had
14 been made to induce him to plead guilty and that he did not feel pressured to plead
15 guilty. He came to the hearing for the purpose of pleading guilty and listened
16 attentively as the prosecutor outlined the facts which it would prove if the case had
17 proceeded to trial.

18 IV. Conclusion

19 The defendant, by consent, has appeared before me pursuant to Rule 11,
20 Federal Rules of Criminal Procedure, and has entered a plea of guilty as to count one
21 of the indictment.

22 After cautioning and examining the defendant under oath and in open court,
23 concerning each of the subject matters mentioned in Rule 11, as described in the
24 preceding sections, I find that the defendant Guillermo Peralta-Tavares is competent
25 to enter this guilty plea, is aware of the nature of the offense charged and the
26 maximum statutory penalties that the same carries, understands that the charge is
27 supported by the government's evidence, has admitted to every element of the
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3 offense charged, and has done so in an intelligent and voluntary manner with full
4 knowledge of the consequences of his guilty plea.

5 Therefore, I recommend that the court accept the guilty plea of the defendant
6 and that the defendant be adjudged guilty as to count one of the indictment. At
7 sentencing the government will request the dismissal of the remaining count
8 pending against this defendant in this case and the dismissal of the only count in
9 Criminal 06-0276 (GAG) pending also against this defendant.

10 This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B)
11 and Rule 72(d) of the Local Rules of Court. Any objections to the same must be
12 specific and must be filed with the Clerk of Court within five (5) days of its receipt.
13 Rule 510.1, Local Rules of Court; Fed. R. Civ. P. 72(b). Failure to timely file specific
14 objections to the report and recommendation is a waiver of the right to review by the
15 district court. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986).

16 At San Juan, Puerto Rico, this 30th day of July, 2007.

17 S/ JUSTO ARENAS
18 Chief United States Magistrate Judge